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GOVERNMENT OF AJMER

(Medical and L.S.G. Department)

NOTIFICATIONS

Ajmer, the 9th September 1955

S.R.O. 1976.—Whereas the term of supersession of the Ajmer Municipal Committee will expire on the 11th September, 1955 *vide* this Government, Medical and Local Self-Government Department Notification No. 15/1/55-LSG., dated the 5th March, 1955, and whereas the Chief Commissioner, Ajmer, has decided to re-constitute the said Committee with effect from the 12th September, 1955,

Therefore, in supersession of this Government Notification No. 9/40/51-LSG., dated the 17th November, 1951 and Notification No. 15/4/55-LSG., dated the 6th August, 1955 and in exercise of the powers conferred on him by section 8(1)(1)(a) of the Ajmer-Merwara Municipalities Regulation, 1925 (VI of 1925), as adapted by the Government of India from time to time, read with the Government of India, late Home Department, Notification No. F.126/37-Public, dated the 1st April, 1937, the Chief Commissioner, Ajmer, hereby directs that the Ajmer Municipal Committee shall consist of twenty-two nominated members, with effect from the 12th September, 1955.

[No. 15/4/55-LSG.]

S.R.O. 1977.—In accordance with the provisions of sub-section (3) of section 8 read with clause (1)(a) of sub-section (1) of section 8 of the Ajmer-Merwara Municipalities Regulation, 1925 (VI of 1925), as adapted by the Government of India from time to time read with the Government of India, late Home Department, Notification No. F.126/37-Public, dated the 1st April, 1937, the Chief Commissioner, Ajmer, hereby directs that with effect from the 12th September, 1955 the Ajmer Municipal Committee shall consist of the following nominated members:—

1. Dr. Amba Lal, Nahar Mohalla, Ajmer.
2. Dr. Suraj Narain Mathur, Lohagal Road, Ajmer.
3. Shri Bhag Chand Soni, Tikam Niwas, Ajmer.
4. Shri Arjan Das Advocate, Diggi Mohalla, Ajmer.
5. Shri Nathu Singh, Raoria Mohalla, near Gujar-ki-Dharti, Ajmer.
6. Shri Shyam Sunder Deedwania Advocate, Naya Bazar, Ajmer.
7. Shri Ram Swaroop Kandoi, Naya Bazar, Ajmer.
8. Shri Jeet Mal Lunia, Brahmapuri, Ajmer.
9. Shri Gulab Chand Dhoot, Jatiawas, Ajmer.
10. Dr. Pohnu Mal, Dhan Mandi, Ajmer.
11. Shri Dinomal s/o Shri Mitharam, near Majestic Talkies, Ajmer.

Hazara Singh, by Respondent No. 19 on his own nomination paper, he did not take any steps regarding the fraud having been played upon him.

The evidence of Randhir Singh R.W. 4 is that he had asked Buta Singh to have one nomination paper filled up and signed by a proposer and seconder on his behalf and on the day of filing of nomination paper, Buta Singh showed him a blank paper thumb marked by a proposer and seconder but he told him not to file it as it was bound to be rejected on account of thumb impressions not having been attested by a Magistrate. The witness admits in cross-examination that he had not asked Mohinder Singh or Hazara Singh to affix their thumb impressions on his nomination paper and contradicts the previous witness R.W. 3 on the point. The respondent No. 1 put S. Harcharn Singh Advocate in the witness box and wanted to examine him to disprove the identification of the proposer and seconder as deposed by Buta Singh Respondent No. 19 as P.W. 5 and S. Shamshad Ali Magistrate P.W. 3, but the Tribunal was of opinion that the petitioner's evidence did not touch the point involved in the case, and it was of no value and need not be rebutted. S. Harcharn Singh was therefore not allowed to be examined and his statement was not recorded (*vide* order dated 9th July, 1955). This is all the evidence which has been produced by the respondent on this issue.

The nomination paper Ex. PW2/1A shows that it was Buta Singh Respondent No. 19 who was proposed and seconded by Hazara Singh and Mohinder Singh. The thumb impressions of proposer and seconder on Ex. PW2/1A are not seriously denied by the Respondents and also by Mohinder Singh R.W. 3. It is further proved by the testimony of S. Shamshad Ali Magistrate (P.W. 3) that proposer and seconder affixed their thumb impressions on the nomination paper of Buta Singh Ex. PW2/1A in the presence of the Magistrate. The evidence of Mohinder Singh and Randhir Singh R.Ws. 3 and 4 respectively that Buta Singh secured the thumb marks of proposer and seconder by saying that it was the nomination paper of Randhir Singh cannot be believed. Mohinder Singh and Randhir Singh contradicted each other and their evidence is wholly insufficient and unworthy of credit to establish fraud. I, therefore, find that allegation of fraud is not proved and decide this issue against the respondents.

Issue No. 4.—Before I proceed to discuss the evidence of the parties on this issue, the legal point as to whether in the case of an improper rejection of a nomination paper of a candidate, the burden of proof of showing material affect remains on the petitioner or it shifts to the respondents on account of any presumption and if any such presumption arises in this case, may be considered.

The words of Section 100(1)C of R. P. Act, 1951 "the result of election has been materially affected" have been the subject matter of much controversy before the Election Tribunals and the opinions expressed have not always been uniform and consistent as remarked by the Hon'ble Judge of the Supreme Court in 10 E. L.R. 30.

The learned counsel for the petitioner has argued on the authority of a large number of cases reported as 1 E.L.R. 330 (338), 2 E.L.R. 1, 8, 12, 20, 88, 121, 136, 245, 266, 3 E.L.R. 81 and 305, 4 E.L.R. 301, 441, 5 E.L.R. 81, 6 E.L.R. 368, 7 E.L.R. 338, 428, 9 E.L.R. 385, 10 E.L.R. 1, that improper rejection of a nomination paper of a candidate raises a strong presumption and the Tribunal must conclude that the result of the election has been materially affected, that the burden is discharged without the necessity of leading any evidence and that it is impossible to conceive of any legal evidence to rebut the presumption and any amount of evidence adduced would be in the nature of things, conjectural and speculative.

It has been contended by the learned counsel for the respondents that in view of the plain meaning of S. 100(1)C of the R. P. Act, 1951 the burden is on the petitioner to establish positively that in the case of an improper rejection of a nomination paper of a candidate the result of election has been materially affected and in such a case no presumption arises by the mere fact that electorate has been deprived of the right to vote for the candidate whose nomination paper has been rejected, that in any case in the circumstances of the present case when it is clear from the evidence of Buta Singh that he was not a serious candidate and had not to contest the election, no presumption can be said to arise in favour of the petitioner and the onus remains on him to prove the material affect on the result of the election and that taking the second aspect of the case if we assume that any initial presumption arises in favour of the petitioner it is discretionary for the court to draw a presumption in the given circumstances and such a presumption is not irrebuttable and that the respondent has led evidence of respectable witnesses to show that the result of the election has not been materially affected in the circumstances of the present case.